TESTIMONY MAY CLOSE WEDNESDAY

BOTH SIDES ARE ANXIOUS TO BEGIN ARGUMENT AND SEND CASE TO THE JURY

A Number of Witnesses, Women and Girls Formerly Employed at the Factory, Swear Frank's Character Is Bad and That His Reputation as to His Relations With Women Is Bad-Defense Objects to This Latter Testimony but is Overruled

THREE EXPERTS CORROBORATE DR. HARRIS IN HIS CONCLUSIONS ABOUT LITTLE GIRL'S DEATH

Street Car Men Testify That English Avenue Car Frequently Ran Ahead of Schedule and One Witness Says Mary Phagan Was Not on Car After It Left Marietta Street. Two Witnesses Say They Saw Frank Talking to Mary

Introduction of testimony both for and against Leo M. Frank will probably be concluded Wednesday afternoon, and in such an event the arguments of the attorneys will begin Thursday morning. If this program is carried out the case will go to the jury some time Friday morning. Owing to the fact that the defense introduced testimony the state will have the opening and closing arguments.

Attorneys for both the state and defense have announced their purpose to conclude the introduction of evidence at the Thursday afternoon session of the trial, and they will make every effort to do so.

Three features characterized the Wednesday morning session: The first was the state's introduction of several physicians to sustain the testimony of Dr. H. F. Harris; the second was the testimony of a number of young women who swore that Frank's character was bad, and the third was evidence given by a number of street car men to the effect that the English avenue car, manned by Motorman Matthews and Conductor Hollis, frequently arrived at the corner of Marietta and Broad streets ahead of time.

Matthews and Hollis, testifying for the defense, swore that Mary Phagan came into the city on their car on April 26; that the car was on time and that she left the car at the corner of Broad and Hunter streets.

M. Kelly, a motorman, said that he rode on Matthews and Hollis' car on the day of the murder; that it was several minutes ahead of time, and that Mary Phagan was not on it after it turned into Broad street from Marietta.

Two young women witnesses testified that they had seen Frank talk with Mary Phagan at the factory.

WOMEN ATTACK FRANKS CHARACTER.

Through a number of women witnesses, most of whom were former employees of the National Pencil factory. Solicitor Dorsey attacked Frank's general character, and especially did he direct his attention the defendant's alleged improper relations with women.

Judge Roan had previously ruled that the state could offer evidence to show that Frank's attitude toward women was bad, if such evidence was offered in rebuttal to the testimony of witnesses for the defense who had sworn that they had never seen the defendant act improperly toward women and had never seen women in his office. The court, in this ruling, however, held that the state could not introduce testimony to point to any specific crime.

Among the witnesses who testified that Frank's character and general reputation were bad were the following: Miss Myrtice Cato, Miss Maggie Griffin, Mrs. R. M. Dunnegan, Mrs. R. H. Johnson, Miss Mario Karst, Miss Nellie Pettis, Mrs. Mary Davis, Mrs. Mary E. Wallace, Miss Estelle Winkle, Miss Carrie Smith and Miss Ruth Robinson, Miss Dewey Hewell and Miss Mamie Kitchens. Miss Robinson swore that she had seen Frank talk with Mary Phagan when she worked on the fourth floor of the factory and that in these conversations the defendant was making suggestions to the girl about her work.

Very few questions were asked these witnesses by the attorneys for the defense. None of them were asked why they gave Frank a bad character.

MEDICAL EXPERTS TESTIFY.

Hypothetical questions and expert medical testimony played a prominent part in the trial Wednesday morning. Two prominent Atlanta physicians—Dr. Clarence Johnson, a stomach specialist, and Dr. George M. Niles, a specialist in digestive derangements—agreed with Dr. H. F. Harris, secretary of the state board of health, that Mary Phagan

must have met her death within an hour after she had eaten her luncheon of cabbage and bread.

Both of these physicians were asked lengthy hypothetical questions by Solicitor Dorsey, based upon the conditions which Dr. Harris swore he had determined by chemical and other tests, and both of the physicians, assuming that the tests were correctly made and that Mary Phagan possessed a normal healthy stomach, gave it as their opinion that the cabbage taken from her stomach by Dr. Harris would have shown more indications of digestion if it had remained in the stomach longer than an hour.

Dr. Funke was positive that the injury to the tissues was done prior to the girl's death and explained that the blood cannot invade the tissues after death.

James Conley the negro sweeper, was brought from the jail to the court house during the morning. It was at first thought that he would be recalled to the stand by the state to rebut portions of Frank's statement, but later it was learned that he had been sent for in order that certain witnesses might identify him.

When court convened at 9 o'clock, Solicitor Dorsey started his argument.

"It is a recognized and uniform practice," said he, "to allow the state to introduce testimony in rebuttal such as we have ready here. As a matter of right, we can first make out a prima facie case, and at any time thereafter go into the whole matter. It is even a matter in the discretion of the court, to reopen the cases for further evidence after both sides have announced closed. These gentlemen of the defense having made a fight on Dr. Harris in the way they

have, the state of Georgia possesses the right to fortify itself with the testimony of these of these other physicians. It is all in your honor's sound discretion."

Judge Roan: "If we allow this testimony, Mr. Dorsey, then it seems the defense will claim the right to bring other physicians to testify on their side."

Mr. Dorsey: "The whole matter is in your honor's sound discretion. Of course, it would be absurd to continue the case indefinitely. But your honor knows that we have a right to go into this matter."

Mr. Arnold: "Why is it any more absurd for us to bring on more expert testimony than it is for him? He started this phase of the case. We have only rebutted it. I know that some judges recently elevated from the position of solicitor general will let the state prove anything in rebuttal, but that is not the law and it is not fair.

STATE LIKE OTHER LITIGANTS.

"The state is like any other litigant. It is entitled to fair play, but nothing more. Yesterday we let hi attack Dr. Hancock's testimony. We let him go into the effect of formaldehyde upon the gastric juices. But it would be absurd to let him ask the question n of Dr. Johnson which is based upon a hypothesis made up by the findings of Dr. Harris, his witness. It is a mere repetition of the original evidence. Some judges have done remarkable things, but that does not make it fair."

The solicitor started to speak, but was interrupted by the court.

“As a matter of right, Mr. Dorsey, you haven’t any right except that which the discretion of the court gives you in this matter. I exercise that discretion in your favor. Put your question.”

The stenographer read at the direction of Solicitor Dorsey, the long hypothetical question which the solicitor had asked the witness. Dr. Clarence John-

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FRANK’S CHARACTER BAD SAYS THE STATE’S WITNESSES

(Continued From Page 1.)

son. Tuesday afternoon, and to which the defense objected, precipitating the argument just concluded.

A 2000-WORD QUESTION.

The question was some 200 words in length and embodied all the physical features which surrounded Mary Phagan’s death. It concluded with the query: “Would you or not base an opinion as to how long after she had eaten this cabbage and bread, this little girl came to her death? And would it be a wild guess or a scientific opinion?”

As the stenographer read the question over, Dr. Johnson took notes on it.

After studying a moment, he said: Before I could answer that question and not violate my oath, I would have to know whether the stomach was capable, and whether or not reliable methods had been used in the test.”

“Assume that, doctor,” said the solicitor.

“I can assume that?”

“Yes, sir.”

The witness answered in about 200 seconds, embodying all of the conditions included in the hypothesis. He concluded by saying: “With due consideration of conditions named as possible factors, I would express as my scientific opinion that the digestion of the bread and cabbage was stopped within one hour after they were eaten.”

Dr. Johnson addressed the court: “I would like to have the stenographer read the answer,” said he. It was read by the stenographer, and the witness concurred in the record of it.

“There is just one other question I would like to ask you, Dr. Johnson. Is every stomach a law unto itself?”

“It is not,” answered the witness. Solicitor Dorsey then turned the witness over to the defense for cross-examination.

THOSE “POSSIBLE FACTORS.”

Attorney Arnold: “Doctor, you spoke of some of the other possible factors of a test of this kind. Now, what do you mean by ‘other possible factors?’”

“I mean the ones mentioned—the bruise on the head, strangulation, etc.”

“How would they operate as factors?”

“Anything that disturbs the circulation of the blood, directly or indirectly within or without the body, or that

hinders the action of the nerves in the stomach, especially the secretions, to prevent the development of characteristics of digestion found within one hour after eating."

"You mentioned also the mechanical condition of the stomach. Please explain just what you mean by that."

"I mean if there had been no change in the size of the stomach no change in the thickness of the stomach, no change in the opening from the stomach into the intestines, no change in the size of the intestines and no change in their thickness."

"I believe you said that the test must be absolutely correct. Now tell us about the color test in determining degrees of acidity."

"That is one feature of the test. There are other methods."

VARIOUS TESTS CITED.

"Would you consider the color test accurate?"

"If the colors were found to be invariable, then that would be a reliable test."

"What other tests are used besides the visual or color test?"

"Any alkaline will neutralize the acids."

"Then the alkaline test is a better test, isn't it?"

"No, sir, I should not say so."

"You consider the eye test better?"

"Yes, sir."

“In the color test, a man’s eyes must be reliable, must they not, in order to make the test accurate?”

Phrasing his answer very carefully in scientific terms, Dr. Johnson answered in the affirmative.

“This acid in the stomach has an ascending and a descending scale, has it not?”

“Yes, sir.”

“What is the height of the normal scale?”

“My experience has been that the degree of acidity varies from 30 to 45 degrees.”

“Then it varies according to the stomach of the individual, doesn’t it?”

“According to the stomach and what is in the stomach.”

“After a body dies, what becomes of the pancreatic juices?”

“In the process of times, unless hindered, they decompose.”

“What effect would formaldehyde have on the pancreatic juices?”

“I mean on the existence of the juices.”

“On the physical property of the juices, it would have no effect. On the chemical property of the juices, there would be none left.”

“What effect do you mean the formaldehyde would have on the chemical property of the juices?”

“It would tend to neutralize the ferment of the juices, according as the formaldehyde was weak or strong.”

“After the stomach has disintegrated, what becomes of the hydrochloric acid?”

“It would disappear like all other fluids and tissues of the body, unless hindered.”

“Wouldn’t it disappear by the process of osmosis?”

“Not in the conditions which you name.”

DIGESTION OFTEN DELAYED.

“The process of digestion often is delayed, isn’t it, doctor?”

“Yes.”

“Name some of the causes.”

“Insufficient mastication, and too much dilution of the juices.”

“You mean by that taking too much water, milk, or liquids like them, into the stomach.”

“Yes.”

“Suppose the food has not been masticated properly; would physical exercise like waisting still further delay the process of digestion?”

“Not unless the exercise was so extensive as to bring actual fatigue. Then it would hinder. If the exercise did not cause fatigue, it would help.”

“Is the lack of proper mastication worse for the digestion than excessive exercise?”

“Yes.”

“Isn’t insufficient mastication worse than any other of the causes that hinder digestion?”

“Yes.”

“Can you tell in any given case how much time the failure to masticate food properly delays the beginning of the process of digestion?”

“I could if I had the food in my laboratory,” said the witness. “Otherwise I could only give an opinion.”

“Without having the food in your laboratory, your opinion would be a guess, would it not?”

DOES NOT GUESS.

“It would be. I do not guess.”

Mr. Arnold exhibited to the witness the specimens introduced by Dr. Hancock which Mr. Dorsey had exhibited to him Tuesday afternoon. Dr. Johnson said that the condition of the specimens, regardless of the time when they were taken in and taken out of the stomach, without any reference to time, showed indigestion. In the course of the discussion of the two specimens, it developed again that the food had been vomited from the stomach. The state scored when Dr. Johnson said that the mere fact that food had been vomited prevented it’s having any scientific value. He stated that the chocolate milk shown in one of the specimens would not have stayed in a normal stomach three or four hours, as Dr. Hancock on the stand had stated it stayed in the stomach of the subject upon whom he experimented. Mr. Arnold ended his examination by asking

the witness if he had examined Mary Phagan's stomach or taken any part in the autopay. Dr. Johnson said he had not.

Before the witness left the stand Mr. Dorsey asked this question: "Would 140 cc, of liquid, taken from the stomach nine days after death, be more than the normal amount?"

"It would be a little in excess of what I call normal," said the witness.

DR. GEORGE NILES CALLED.

Dr. George M. Niles was the next witness in rebuttal for the state. He testified that he had been practicing for twenty-seven years, and that he has specialized, and that he has specialized on derangements of digestion. He is a professor at the Atlanta Medical college, in gastro-intestinal studies, and is the author of a text book on pellagra.

"Doctor, is every stomach a law unto itself?" asked the solicitor.

"Every healthy stomach has a definite and orderly relation to every other healthy stomach," replied Dr. Niles.

"What acts upon the pylorus and lets the food out of the stomach?"

Dr. Niles replied that when the acidity in the stomach reaches a certain point, it opens the pylorus automatically, and that when the acidity in the lower intestines also reaches a certain degree, it closes the pylorus automatically.

The solicitor the asked the witness the long hypothetical question which he had put to Dr. Johnson, embodying the various physical features surrounding Mary

Phagan’s death, and later the examination of her stomach’s contents.

Dr. Niles examined the samples of cabbage taken from Mary Phagan’s stomach and stated at length the reasons for giving the answer that he did. He said that in the orderly progress of digestion, in the course of an hour, there should be more or less free hydrochloric acid in the stomach; and that had that portion of digestion which is not in the stomach been completed, there should have been enough acidity to cause the pylorus to open and release a portion of the food into the small intestines.

CORROBORATES DR. HARRIS

Dr. Niles did not in his answer fix a specific interval between feeding and death. He said that within an hour he would expect to find free hydrochloric acid in the stomach. The text made by Dr. Harris had shown that there was none in Mary Phagan’s stomach; therefore Dr. Niles conclusion corroborated that of Dr. Harris.

Dr. Niles said further, answering a questioned by the solicitor, that sever physical exercise of great mental stress tends to retard digestion. There followed other technical questions concerning the stomach, and in his answers the witness publicized who had testified for the state.

“What do you say about the wide variation of diseased stomachs?”

“There are very wide variations,” said the witness.

Attorney Arnold cross-examined the witness.

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“You have pretty wide variances in the normal stomach, haven’t you, doctor?”

STOMACHS HAVE IDIOSYNCRASIES

“We have idiosyncrasies and peculiarities, but where they are too marked we would not call that normal stomach.”

“Is there any mechanical rule for measuring the digestive power on every kind of food?”

“What do you mean by mechanical rule?”

“Well, is there any rule of any kind, then?”

“Healthy stomachs have a fairly fixed standard of time for digesting foods.”

“Why do you take so many thousand cases to get an average?”

“Because that makes our position all the more certain.”

“Is there anything about a man more individual than the kinds of food that suit him?”

“Yes, I think a man’s temperament varies more.”

“Healthy stomachs vary, don’t they?”

“Under normal circumstances, the process of digestion in a healthy stomach follows a fairly fixed rule.”

“What time does it take a healthy stomach to digest cabbage?”

“I can’t answer that question.”

“Did you ever take cabbage from a stomach?”

“I took cabbage from a cancerous stomach that had been there twenty-four hours.”

“I’m not talking about a cancerous stomach. I am talking about a healthy stomach. What is the longest you have ever known cabbage to remain in a healthy stomach?”

“I have found the remains of cabbage in a healthy stomach?”

“I have found the remains of cabbage in a healthy stomach four or five hours after it was eaten.”

“Mastication is one of the important factors in digestion, isn’t it?”

“Very important.”

“If food is masticated poorly, that delays the beginning of digestion, doesn’t it?”

“Yes, mastication is one of the first stages of digestion, and if food is masticated poorly, then the stomach is robbed of one of the first stages.”

“Isn’t it impossible to say how long unchewed cabbage would lie in the stomach before digestion began?”

DIGESTION BEGINS IMMEDIATELY

“No, I should say that a healthy stomach would begin to digest food at once, whether it had been chewed or not.”

“Poor mastication would delay digestion though, wouldn’t it?”

“It takes very little mastication to start the balls a-rolling, if I may be permitted to express it that way.”

SHOWN SPECIMEN OF CABBAGE

“That cabbage taken from Mary Phagan’s stomach was not well chewed, was it?”

Dr. Niles examined the specimen and answered: “It was not chewed as well as it should have been. But the anticipation of eating, and a good healthy appetite, start the saliva juices in the mouth, whether the food is chewed or not.”

“You don’t pretend to say how long that cabbage lay in Mary Phagan’s stomach, do you?”

“Not by looking at it—no.”

“It might have lain there four or five hours, might it not?”

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“It might have lain there four or five hours, might it not?”

“No, I think that in that length of time it would have been pulverized.”

“Then it might have lain there three hours, might it now?”

“No, in my opinion in three hours it would be considerably broken up. But I want you to understand that that merely is an opinion based on visual examination.”

“That’s largely a guess, and a pretty wild one, isn’t it, doctor?”

“No, I should say that the juices of the stomach would have done considerable work in three hours.”

“Suppose she bolted this food after chewing it but little.”

“If she was hungry, and enjoyed the meal, then the saliva juices would have been supplied.”

“That being the case, what’s the use of chewing food at all?”

“Chewing is a very important factor in the proper digestion of food.”

“Well, if the saliva juices would be supplied by hunger and the anticipation of eating, why worry about chewing? Why not just put the food in with a tube?”

“There are certain compensatory processes in the body whereby if unction of one organ is neglected, another organ is a large measure supplies the deficiency.”

“Then why not work those compensatory processes all the time, and save the teeth?”

WOULD WEAR OUT STOMACH

“In that event you would wear out the stomach by overworking it.”

“Then you don’t think that cabbage lay in Mary Phagan’s stomach four or five hours?”

“No, I think in that time it would have been pulverized.”

Attorney Arnold asked Dr. Niles a number of other questions, in an effort to tangle the witness; but was not successful.

“What time did you say that this cabbage had been in Mary Phagan’s stomach?” asked Mr. Arnold, continuing.

“I said that the assuming the stomach to be healthy and assuming the test to be correct, it was there less than an hour.”

“Did you know that Dr. Harris made this test alone? That he kept the result of the test a secret? That he came here with his conclusions unsupported? And that he

explained that he made the test because he liked Mr. Dorsey?”

“No, I didn’t know that, although I had been told something to that effect.”

“All right. Come down,” said Mr. Arnold.

“Wait a minute,” interrupted the solicitor. “Did you ever hear any rule of medical ethics that requires a man, when asked to make a test, to call in Tom, Dick, and Harry?”

Before Dr. Niles could answer, Attorney Arnold said: “We are not talking about Dick, Tom and Harry.”

“No, but I am,” said the solicitor.

Dr. Niles answered that he knew of no such rule of ethics.

VIOLENCE DONE BEFORE DEATH.

Dr. John Funke, a physician for twelve years, present professor of pathology and bacteriology at the Atlanta Medical college, was the next witness. He testified that he made special studies of the diseases of the tissues. In answer to the solicitor’s question, he said he was shown sections taken from the body of Mary Phagan. He testified that his examination under a microscope showed that the blood had invaded the tissues; and that the blood vessels were gorged with blood. The vessels were larger than normal, said he. He could not tell in the method of examination he followed, whether or not there was a discoloration. From the condition he found, said he, it was reasonable to suppose that there was a swelling there.

Solicitor Dorsey: “Dr. Funke, can you give us a scientific and accurate opinion as to whether or not these tissues were torn before or after death?”

“They were injured before death. I know that positively, because blood cannot invade the tissues after death. It may flow out, but not in.”

ANOTHER HYPOTHETICAL QUESTION

The solicitor then asked this hypothetical question: A girl thirteen or fourteen years old, at 11:30 o’clock on Saturday morning, eats a normal meal of cabbage, wheat bread and water. At 3 a. m, the following morning, she is found with a cord around her neck, the cord is indented into the flesh, the tongue is out and swollen, and everything indicates that she was strangled. Rigor mortis has set in and progressed from sixteen to twenty hours. She is lying on her face, and gravity has dropped the blood into the lower portions of the body upon the ground. She is embalmed between 10 and 2 o’clock on Sunday, a reasonable amount of the formaldehyde being used in the fluid which is injected into the veins, the body is interred. A wee or ten days later it is disinterred. The stomach is normal. There is no mucous. This cabbage (exhibiting the specimen) is found, together with granules of undigested starch, the state of the cabbage corresponding with the state of the starch granules. Thirty-two degrees of combined hydrochloric acid, and no free hydrochloric acid is found. The pylorus is unopened. The small intestine for six feet is empty. Supposing these statements to be the facts, and combining them with what you know about the conditions of the organs— “would you predicate a scientific

opinion as to how long after the meal she met her death, and as to how long before death she received her injuries?”

The witness at first did not want to express an opinion as to the time elapsing between the meal and death, but after Solicitor Dorsey had augmented the hypothesis with scientific terms, he said it was reasonable to assume that the food had been in the stomach about an hour—maybe a little more or a little less.

EXAMINED TISSUES LAST WEEK

Attorney Arnold cross-examined the witness, and brought out the fact that a week ago last Saturday Dr. Funke was asked by Dr. R. T. Dorsey, a brother of a solicitor, to examine the tissues taken from the organic walls of Mary Phagan’s body, and that he went to Dr. Harris’ laboratory and examined them there.

Mr. Arnold asked as to the size of the portions of the wall that the doctor had examined, and handing him a piece of paper asked him to tear off a piece of paper of the same size. The witness tore off a small strip of paper, which was measured, and proved to eb one-fourth of an inch long.

“Of course it was thicker than the paper?” asked Mr. Arnold.

“No, indeed,” said the witness. “It was much thinner.”

THINNER THAN TISSUE PAPER

“Thinner than tissue paper?”

“Yes, it had to be in order for me to study it properly. I wouldn’t have had it any other way.”

“How many of these strips did you see?”

“Thirty or forty.”

“You were not present at the autopsy?”

“No.”

“And you were not shown these strips until after this trial had commenced—more than three months after the death of Mary Phagan” And you don’t know of your own knowledge that they came from Mary Phagan’s body?”

“No, I could only swear positively that they were strips from the wall of the organs of a human being. I can keep these strips for any length of time in a proper preservative.”

“You are certain that the injury to these strips, which you saw, occurred before death?"

"Yes, I can swear that positively.”

FRANNK’S TELEGRAM IS READ

A. M. Beatty, local manager for the Postal Telegraph company, was called by Solicitor Dorsey to identify a telegram sent by Frank to Adolph Montag, then in New York, on April 28. The witness identified the telegram.

The solicitor announced that Mr. Beatty was called to the stand because the rules of the company forbade him divulging the nature of any of its patrons’ business outside of court. The witness had the telegram when he stepped on the stand, and after he had been sworn surrendered it to the solicitor.

In answer to a question, Mr. Beatty told the solicitor that that was the only telegram sent over his company's lines by Frank within the few days following the murder.

Solicitor Dorsey read the telegram to the jury. It was dated "Atlanta, Ga., April 28," and addressed, "Mr. Adolf Montag, care Imperial hotel, New York," and read as follows:

"You may have read in Atlanta papers of factory girl found dead Sunday morning in cellar of pencil factory. Police will eventually solve it. Assure my uncle I am all right in case he asks. Our company has case well in hand. (Sighed) Leo M. Frank."

WESTERN UNION MANAGER CALLED

W. G. Peebles, Atlanta manager for the Western Union Telegraph company, was called into court to produce telegrams which he had been subpoenaed to bring with him. He brought with him a copy of the rules of the company relating to the giving out of messages. This was read by Judge Roan.

There was some argument as to the admissibility of the telegrams, and Judge Roan spoke of some process necessary to protect the witness. This caused Attorney Rosser to remark. "When the law directs a man to bring a thing into court, he's got to bring it. The Western Union is no better than any individual." It developed, however, that the manager of the company had with him no telegrams signed by Frank.

In answer to a question by Solicitor Dorsey as to whether or not the Western Union had received for

transmission any telegram signed, “Leo M. Frank,” within the dates mentioned in the subpoena served upon him which included the period of time directly after the murder. Mr. Peebles replied that he had none.

Mr. Peebles handed to Solicitor Dorsey a half dozen telegrams which the solicitor perused and then handed to the defense attorneys. While Mr. Dorsey read them, Attorney Arnold informed the court that he would object to the introduction of anything not signed by Leo M. Frank. Solicitor Dorsey declared it was not his intention to attempt the introduction of anything like that. The solicitor said that inasmuch as none of the telegrams produced bore the signature of the accused, he did not want to make a point on them. The witness then was excused.

SAYS FRANK’S CHARACTER IS BAD

Miss Myrtice Cato, one of the solicitor’s character witnesses against Leo M. Frank, called to the stand.

“Ahe you acquainted with the general character of Leo M. Frank, prior to and including April 26, 1913?”

“Yes.”

“Was that character good or bad?”

“Bad.”

“Did you ever work at the National Pencil factory?”

“Yes.”

“Was that character good or bad?”

“Bad.”

“Did you ever work at the National Pencil factory?”

“Yes.”

“When did you stop work there?”

“On April 28.”

“How long had you worked there?”

“Three and a half years.”

“What floor did you work on?”

“The fourth floor.”

“She is with you, gentlemen,” said the solicitor, turning to the attorneys for the defense, he having exhausted the questions allowed him by the law.

“Come down,” said Attorney Rosser.

The solicitor, it was stated, depended necessarily on cross-questions by the defense to bring out what details. If any, his character witnesses could swear to, Judge Roan having ruled that under the law the solicitor could not bring out those details on direct questioning.

ATTACKS FRANK’S CHARACTER

Miss Maggie Griffith was the next witnesses. She testified in answer to the same questions that she knew the general character of Frank and that it was bad. She said that she worked at the factory for two and a half months and that she worked on the fourth floor.

Solicitor Dorsey paused a moment and Attorney Rosser in a low tone asked the witness: “When did you quit work at the factory?” She answered that she quit in February.

“Wait a minute,” said Solicitor Dorsey. “I’m not through, yet.”

“I beg your pardon,” said Attorney Rosser. “I thought you had finished.”

“Now,” said the solicitor, “I am going to ask you a question, and I don’t want to answer it until the judge tells you whether you can answer it or not. Are you acquainted with the general character of Leo M. Frank as to his relations with women.”

Immediately there was an objection from Attorney Rosser.

Solicitor Dorsey replied.

Mr. Dorsey contended that testimony of the defense’s witnesses put in issue this specific phase of Frank’s character.

JURY SENT OUT

The jury was sent out.

Attorney Rosser insisted, to start on, that the state could not show anything but general character. “I thought,” said he, “that your honor had ruled to that effect already.”

Solicitor Dorsey replied by, saying: “Your honor ruled that we could not show specific instances, and to that ruling we submit. This, however, is a different proposition. The statement by the defendant to the jury that he never had women in his office put that phase of his character directly in issue.”

Judge Roan: “Have you got any authority?”

Solicitor Dorsey: “I don’t need any authority, your honor.”

Judge Roan: “I didn’t ask you that, I asked you if you had any authority?”

Solicitor Dorsey: “I don’t need any authority, your honor.”

Judge Roan: “I didn’t ask you that. I asked you if you had any authority?”

Solicitor Dorsey: “I have none immediately at hand, your honor, but I don’t want to be understood as submitting that we don’t need any authority.

“Now, your honor” continued the solicitor, “while the jury is out I want to show by this witness that she saw Frank go into the dreaming room on the fourth floor with one of the foreladies, and that on one else was in there at the time.”

Attorney Rosser objected strenuously.

Solicitor Dorsey continued: “Certainty, your honor, we are entitled to show that one of the very witnesses of the defense, who testified that she knew of no wrong conduct on the part of the defendant and that she had never been guilty of any wrong conduct with him, was seen by this witness to go into the dressing room with him on the fourth floor.”

Judge Roan “Are you offering this testimony in rebuttal to the testimony of the lady you speak of?”

Solicitor Dorsey: “Yes, sir, that’s exactly the way we are offering it.”

Attorney Rosser objected on the ground that the testimony of their witnesses, to wit, the women who work on the fourth floor, was offered in rebuttal to the testimony of James Conley.

COURT ADMITS EVIDENCE

Judge Roan: “I rule, Mr. Dorsey, that if you undertake to show a distinct crime the testimony will not be admissible. But if you offer the testimony in contradiction to the testimony of one of the witnesses for the defense, I think you can put it in. Also, I am inclined to think you can show the defendant’s character as to his relations with women.”

Attorney Rosser met the ruling with the demand that before the solicitor could offer the testimony was a contradiction of the defense witness, the defense witness must first be put back on the stand by the solicitor for cross-examination. This demand was based on his contention that defense witness had testified to conduct in Frank’s office.

“All right,” said the solicitor. “Bring in Miss Rebecca Carson.”

The jury returned to the court room.

Miss Griffin continued on the stand.

“Do you know the general character of Leo M. Frank as to his attitude toward women?”

“Yes, I do.”

“What is it?”

“Bad.”

Under cross-examination by Attorney Rosser:

“How long did you work at the pencil factory?”

“Two months.”

“What floor?”

“Fourth.”

“Whom did you know there?”

The witness named several young women.

“What did you do when you left the factory?”

“I didn’t work for two months, and then I went to the cotton mills.”

“Where do you live?”

“84 Evans drive, Fort McPherson.”

MISS CATO RECALLED

That concluded the cross-examination, and Solicitor Dorsey recalled Miss Myrtice Cato.

The solicitor asked Miss Cato if she knew Frank’s general character as to his relations with women, and she replied “No.” She was asked by Attorney Rosser where she works now. She replied, “Cone’s drug store.”

In reply to other questions, she said she lives at 59 Tumlin street, and that she worked in the factory for over three years.

Mrs. R. M. Dunnegan was the next witness. She answered the solicitor’s questions, saying that she knew Frank’s general character and that it was bad. In reply to the question as to whether or not she knew of Frank’s

relations with women, she said no. The witness stated that she worked at the pencil factory two years ago for two or three weeks. At that time, she said, she was fourteen years old.

She was excused without cross-examination.

MRS. JOHNSTON TESTIFIES

Mrs. H. R. Johnson, of Stonewall, Ga., was called. Mrs. Johnson said she worked at the pencil factory two months during 1910. She said Frank's general reputation was bad. Asked if she knew of his relations with women, she said "not very much." The court held that the solicitor could ask no further questions.

The defense cross-examined her only to the extent of learning that Stonewall, Ga., is on the Fairburn car line, and the witness when at the factory worked on the fourth floor.

Miss Marie Karst was the next witness. She said that she worked at the factory, on the second floor, two years ago. She declared that she knew Frank's general reputation and character, and his attitude toward women, and that they were bad.

Cross examined by Mr. Rosser, the witness stated that she works for the Nunnally-McCrea company, and that she lives at 196 Kelly street.

Miss Nellie Pettis was called. She declared that she knew Frank's general reputation and character and that they were bad. She testified that she knew of his relations with women and that they were bad.

The witness stated that she never had worked at the factory, but had gone there a number of Saturday's to get the money of her sister-in-law, who did work there. Once she saw Frank, she said.

Under cross-examination by Attorney Rosser, the witness testified that she lives at No. 9 Oliver street, that her sister-in-law is Mrs. Lillie Mae Petis, and that her mother is a maker of boxes.

Mrs. C. T. Harrison, Mrs. Pearl Dobson and Tom Blackstock, were called, but none answered.

OTHERS GIVE SIMILAR TESTIMONY.

Mrs. Mary Davis was the next witness. She testified that she had worked at the pencil factory, and that she knew Frank's character, and that it was bad. His character, and that it was bad. His conduct with women also was bad, she swore.

On cross-examination by Attorney Rosser, she said shad worked at the pencil factory two months. She said she is not employed now. She is living with her husband at 3 Louise alley.

Mrs. Mary E. Wallace was called. She testified that she worked at the pencil factory three days in July, 1911. She said that Frank's general character is bad, and his conduct with women is bad. She was excused without cross-examination.

Miss Estella Winkle was called. She worked at the factory one week in March, 1910. She testified that Frank's general character was bad, and his conduct with

women was bad. On cross-examination. Anthony Rosser asked:

“Where do you work now?”

“Not anywhere,” she said.

“How long have you been unemployed?”

“About two years.”

“Where do you live?”

“In the country about twelve miles from Griffin.” She was excused.

Miss Carrie Smith was called. She testified that formerly she was employed on the fourth floor of the pencil factory, and that she had worked there “off and on” for three years, finally severing her connection with the factory one week after last Christmas. In cross-examination she said she lives at 257 Simpson street; that she is not working at present.

Miss Ruth Robinson was called.

“Did you know Mary Phagan?” asked the solicitor.

“Yes.”

“Do you know Leo M. Frank?”

“Yes.”

SAW FRANK TALK TO PHAGAN GIRL

“Did you ever see Frank talk to Mary Phagan?”

“Yes, sir.”

“Tell the jury when, where and in what manner he addressed her.”

“Well, when she was at work, I saw him talking to her.”

“How often did this occur?”

“Not very often.”

“Describe these conversations to the jury.”

“Well, he’d just tell her about her work.”

“Go ahead and tell all about them.”

“Well, that’s all. He’d just tell about her work.”

“Where did he stand, and what did he do, when he was talking to her?”

“Just close enough to talk to her.”

“What was she doing then?”

“She was putting rubbers in pencils.”

“What floor was she on?”

“The fourth floor.”

“What did she do when he talked to her?”

“What was she doing then?”

“She was putting rubbers in pencils.”

“What floor was she on?”

“The fourth floor.”

“What did she do when he talked to her?”

“Well, she did what he told her to.”

“Take this pencil, now, and see if you can show me how Frank showed Mary about it.”

The witness took the rubber out of a pencil and put it in again.

“When Mary had hold of the pencil, where would Frank’s hands be?” persisted the solicitor.

“Well I don’t know. By his side I guess.”

“How many times did this occur?”

“Mary didn’t work there very long after I went to work.”

“Did you ever hear Frank address Mary?”

“Yes.”

“What did he call her?”

“Mary.”

That concluded the direct examination. Attorney Rosser asked her on cross-examination: “You don’t remember ever hearing him call her that do you?”

“Yess, sir, I heard him.”

The witness excused.

DEWEY HEWELL TESTIFIES

Dewey Hewell, the girl whom the solicitor had brought back from the Home of the Good Shepherd in Cincinnati, was called.

The solicitor had considerable difficulty in making the witness understand what he meant the witness understand what he meant when he asked her where she came from. Finally she understood, and answered that she came to Atlanta from the Home of the Good Shepherd in Cincinnati.

“Did you ever work for the National Pencil company?”

“Yes.”

“How long?”

“About four months.”

“When was that?”

“I was at work there during February and March, 1913.”

“When did you quit there?”

“In March.”

“During the time you worked there, did you know Leo M. Frank?”

“Yes, sir.”

“Did you know Mary Phagan?”

“Yes.”

“Did you ever see Frank talking to Mary Phagan?”

“Yes.”

“How often?”

“Sometimes two or three times a day.”

“What did you see him do?”

“I saw him put his hand on her shoulder.”

“Did he do anything else?”

“No, sir. I didn’t see him do anything else.”

“Did he call her by any name, and if so, what?”

“Yes, sir, he called her Mary.”

“Where did he stand when he talked to her?”

“He would stand close to her.”

The witness was cross-examined

(Continued On Page 5, Col. 1.)

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May Close State’s Testimony Wednesday

(Continued From Page 4.)

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briefly by Attorney Rosser.

“You say that was in the metal department?”

“Yes, sir.”

“You were not in the metal department long, were you?”

“About two weeks.”

“The other girls were there when Frank was talking to little Mary, weren’t they?”

“Yes, sir.”

“They were at work and you were at work, weren’t you?”

“Yes, sir.”

“They were at work and you were at work, weren’t you?”

“Yes, sir.”

“You don’t know what he was talking to her about, do you?”

“No, sir.”

Attorney Rosser, in cross-examining these witnesses, spoke to them in kindly voice, in striking contract to the tone he used toward other witnesses.

MISS CARSON RECALLED

Miss Rebecca Carson was called. She stalled at Frank when she took the stand.

Solicitor Dorsey: “Did you ever go into the dressing room on the fourth floor with Leo M. Frank?”

“No, sir, I never did,” emphatically.

“All right,” said the solicitor. “Come down.”

Miss Myrtice Cato was recalled.

“Now don’t answer my question until the judge tells you to,” admonished Solicitor Dorsey. “Did you ever see Miss Rebecca Carson go into the private dressing room on the fourth door with Leo M. Frank?”

Mr. Rosser was on his feet with an objection, but before he could voice it the witness had answered “Yes.”

Then followed a sharp and brief wrangle, with the result that Judge Roan, holding to his former ruling, let the answer stay in the record.

“How often did you see them to in there together?”

“AIN’T ALL I KNOW.”

“I never saw it but twice, and that ain’t all I know—."

“Wait a minute!” shouted Mr. Rosser. Then having stopped the girl, in this kindly tone he asked: “When was that?”

“Some time this year.”

“What time of day?”

“In the morning.”

“Were other people there?”

“Yes, but I don’t think the noticed it.”

“We don’t want to know what you guess. We want to know what you know. Do you know if they saw it?”

“No, sir.”

Solicitor Dorsey: “How did you happen to see them?”

“I looked up the aisle. And that ain’t all I saw either—”

“Wait a minute! Stop!” shouted Mr. Rosser again. The solicitor told the witness to come down.

SAW FRANK WITH MISS CARSON

Miss Maggie Griffith was recalled to the stand. Replying to the questions of the solicitor, she testified that she knew Miss Rebecca Carson.

“Did you ever see her go into the dressing room on the fourth floor with Leo M. Frank?”

“Yes, sir! Three or four times.”

“What time was it?”

“Sometimes it was in the morning, and sometimes it was in the afternoon.”

“How long did they stay in there?”

“Fifteen to thirty minutes.”

The defense objected, and the question and answer were ruled out.

Solicitor Dorsey: “Did you see them go in that dressing room?”

“Yes.”

“Did you see them come out?”

“Yes.”

Mr. Rosser: “Was that during work hours?”

“Yes.”

“Come down.”

Solicitor Dorsey called for Miss Kitchens. She did not answer. The solicitor claimed to the court that she was a factory employee and had been subpoenaed several days ago.

“Well, what have we got to do with this that?” demanded Mr. Rosser.

“Nothing,” said the solicitor, “but we want her here.”

The court dispatched the sheriff to bring her to court.

STREET CAR INSPECTOR TESTIFIES

Henry A. Hoffman, an inspector for the Georgia Railway and Power company, was called. He said he knew W. M. Matthews, a motorman, and that on April 26 and prior to that time Matthews was under him for thirty-seven minutes each day from 11:30 to 12:07 o’clock. He declared that there was no such thing as a 12:07 1-2 schedule. He said Mathews’ car was due at Broad and Marietta streets at 12:07 o’clock. Over the objection of the attorneys for the

defense the witness stated that prior to April 26 he had been on Matthews' car when it cut off the Fair street car due at Broad and Marietta at 12:05, and that the Fair street car on that occasion was on time. Over the objection of the defense, the witness stated that several times he had compared watches with Matthews and found a variance of from 20 to 45 seconds, Matthews' watch being fast.

MATTHEWS RAN AHEAD OF TIME

"Have you ever demerited Matthews for running ahead of schedule?"

"I called his attention to it twice that I know of."

"What is the custom regarding running ahead of schedule at relief time?"

"Well, they sometimes come in ahead of schedule at dinner and supper relief periods?"

Attorney Rosser cross-examined the witness.

"You don't pretend to know whether or not the car was on time that day, do you?"

"No, I don't know."

"Don't you demerit these street car men every time they are off of schedule?"

"No, we talk to them."

"When did you catch Matthews ahead of schedule the last time?"

"Some time in March."

"What is the longest time you ever caught him ahead of time?"

“Three minutes.”

Attorney Rosser asked several questions on this point. The witness replied that he remembered catching Matthews only twice. He said he had known Matthews ever since he (the witness) had been an inspector. The witness was excused.

CONTRADICTS MATTHEWS AND HOLLIS

M. Kelly, a motorman employed by the Georgia Railway and Power company, was called to the stand. He contradicted Matthews and Hollis, the conductor of the car which Mary Phagan rode on April 26, regarding Mary Phagan riding with them around to Broad and Hunter streets that day. He testified that on April 26 at 3 minutes after 12 he was at Forsyth and Marietta streets and that he boarded the English Avenue and Cooper street car of which Matthews and Hollis were in charge and rode with them around the corner into Broad with them. He said that the car must have been four minutes ahead of time to arrive then. He saw the motorman and conductor relieved, and got on the car and rode around the corner with them. Mary Phagan was not on that car then, he said, after he got on. He testified that he knew Mary Phagan by sight.

Attorney Rosser cross-examined the witness.

Mr. Rosser strove to disconcert the witness by the use of rapid-fire questions.

“Do you remember when you looked at your watch yesterday?” he asked.

“I looked at it several times.”

“Do you remember some specific time when you looked at it?”

“Yes, when I was coming into the center of town just before noon yesterday.”

“Oh, yes, you always look when you are coming into town, don’t you? It’s your custom?”

“Yes.”

The witness said he could not remember whether he looked at his watch two weeks ago today, nor what time it was then.

“Why didn’t you report this before?” asked Mr. Rosser.

“Well, I didn’t want to get into it.”

“You can’t remember whom you saw on your car two weeks ago, can you?”

“No, sir.”

TOLD STARNES TODAY

“When did you tell the detectives about this?”

“I told Mr. Starnes this morning.”

“Did you tell anybody else before that?”

“I think I did.”

“Where had you been before you saw this car that day?”

“Well, I stood near Broad and Marietta streets for several minutes, and then I walked up to Forsyth.”

“Where di you go on the car?”

“I went to Alabama and Broad streets. I wanted to get a car and go out and get my mother and bring her down to the parade.”

“Do you remember anybody else on the car?”

“No, only the relief crew?”

“Did anybody get on the car when you did?”

“Yes, one or two. I waited for them.”

“Do you remember how they looked, how they were dressed?”

“No, I don’t.”

“Did any passengers get off the car?”

“I don’t know.”

“Then you remember four months afterwards looking at your watch that day at 3 minutes after 12 o’clock?”

“Yes, because I warned to get the College Park car and go out to my mother’s and take her to see the parade.”

“What is the schedule on the College Park car?”

“It runs every ten minutes.”

The witness was excused.

CAR OFTEN AHEAD OF SCHEDULE

W. B. Owens was the next witness. He is a motorman who has had among other routes, Route No. 8, which is the route from White City to Howell station. He testified that this car is due at the corner of Marietta and Broad streets at 12:05 or 2 minutes ahead of the Cooper-English avenue car. He testified that he did not remember seeing the

Cooper Street-English avenue car on April 26, but that he has known it to come into town ahead of his car sometimes as much as 2 minutes ahead of his car, which would put it in town 4 minutes ahead of its schedule.

Mr. Rosser asked him a couple of unimportant questions, and he was excused.

I.F. Ingram, a street car conductor, was the next witness. He testified that he lives in the Western part of the city, and comes into town from his home on the Cooper Street-English avenue car. He testified that he came to town on that car on April 26, but that he does not recall what time it was. He testified that he has seen that car ahead of its schedule sometimes as high as four minutes. He testified that he has also known it to arrive in town behind time.

Attorney Rosser: “You’ve seen it come in behind time as well as ahead of time, have you?”

“Yes, but I’ve seen it ahead of time more often than I’ve seen it late.”

“They punish you for coming in ahead, don’t they?”

“Yes. They punish you for coming in late, too.”

“Are you sure they punish you for coming in late?”

“Yes, if you can’t make a run they take you off of it. That’s what I call punishment.”

Miss Mamie Kitchens was the next witness. She testified that she works on the fourth floor of the pencil factory and has been working there nearly two years. She testified that she was there on that floor yesterday, and

that she had not been put on the stand as a witness for the defense.

Asked whether any other girls on the fourth floor had not been subpoenaed by the defense, she stated that's he knows two, and mentioned the names of Miss Eva Jones and Miss Howard.

Asked if she was acquainted with the general character of Leo M. Frank prior to April 26, she said she did not believe she could testify; so on this point that solicitor excused her and immediately took up another line of inquiry.

FRANK OPENED DRESSING ROOM

In response to his questions, she testified that she knows Iren Jackson and Miss Mayfield, and that she remembers having been with these two girls in the dressing room on the fourth floor of the pencil factory when Frank came and opened the door without knocking and put his head in.

FRANK GRINNED AT GIRLS

She testified that Miss Jackson was undressed at the time; that Frank grinned and remained so long in the door that Miss Jackson exclaimed, "We're dressing, blame it!"

She was cross-examined briefly by Attorney Rosser.

"Didn't he ask you girls whether you had any work to do?"

"Not that way, he didn't."

"Yes. I know, he doesn't talk in the same tone of voice I do. But what I want to know is whether he asked you this

question, or something very nearly like it: ‘Haven’t you girls got any work to do?’”

“Yes, sir, he asked us something like that.”

“What time of day was that?”

“I can’t say what time of day it was.”

“Was it during work hours?”

“Yes, it was during work hours, but we weren’t at work because there wasn’t any work for us to do.”

“Ain’t you mistaken about Miss Jones not having testified?”

“I’ve only got her word for it. That’s all I know.”

“Did Miss Jones work there before April 26?”

“Yes, sir.”

“Now, I’m going to ask you a question that he have asked all of the ladies on the fourth floor who have testified. Did you ever, between July, 1912, and the first Saturday in January, 1913, inclusive, go to Mr. Frank’s office for any improper purpose?”

“No, I never went there in my life for anything except to get some money on my time.”

The witness was excused and court adjourned at 12:59 until 2 o’clock.

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THEY CORROBORATE DR. HARRIS

Dr. George M. Niles (left) and Dr. Clarence Johnson,

well-known specialists who testified Wednesday that it was possible to tell how long food in the stomach of little Mary Phagan before she met death.

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TWO MEN SAW MARY PHAGAN ON WAY TO FACTORY ON APRIL 26

State's Witnesses Saw Girl On Forsyth Viaduct Shortly After Noon Day of Tragedy

M. E. McCoy, a Painter, Saw Girl Who Was Afterwards Slain, Pass the Cooledge Paint Store at 12:03—He Remembers Time for He Looked at Watch at Noon. George Kendley, Motorman, Saw Her at Forsyth and Alabama at 12:0**5**

Court adjourned at 5:50 o'clock until 9 o'clock Wednesday.

Two of the state's rebuttal witnesses in the Frank trial, put on the stand late Tuesday afternoon, swore that they knew Mary Phagan and had seen her on Forsyth street shortly after 12 o'clock, April 26, walking toward the pencil factory.

These witnesses were M. E. McCoy, a painter and farmer, and George Kendley, a motorman on the College Park line. Their testimony was intended to discredit the evidence given by Motorman Matthews and Conductor Hollis, of the English avenue line, who swore that Mary

Phagan came to the city on their car the day of the murder and that she left the car at the corner of Broad and Hunter streets.

McCoy said he was standing in front of Cooledge's paint store, 12 North Forsyth street, about noon of April 26 and while there he saw Mary Phagan pass. Kendley testified that he was at the corner of Alabama and Forsyth streets about 12:05 and saw the little girl past hat point.

Attorney Rosser subjected Kendley to a most terrific cross-examination, asking him among other question, if he has not talked so constantly of his belief in Frank's guilt that he and made himself a general nuisance to passengers on his car, and if he had not said he would help to lynch the defendant. Kendley was badly rattled before Mr. Rosser allowed him to leave the stand.

J. H. Hendricks, a motorman on the Marietta Street-Stockyards line prior to April 26, and J. C. McEwen, a motorman on the Marietta Street-White City line, swore that the car of Matthews and Hollis frequently came into the city ahead of time on their relief trips.

Dr. Clarence Johnson, a stomach specialist, was on the stand when court adjourned.

Replying to a request from Solicitor Dorsey for a ruling Judge Roan held that the state might introduce witnesses to testify to Frank's character, butt he state could not show by these witnesses specific instances of misconduct on the part of the defendant. This, said the court, could only be brought out by the defense.

Solicitor Dorsey's statement, which brought the ruling from the court, was as follows: "The state wants to prove and is in a position to prove, general bad character on the part of Frank, and we want also to prove specific instances of misconduct. We want to show by this witness (Miss Nellie Wood, a former employee of the pencil factory), that he made an indecent proposal to her in his office."

Just how and under what conditions the city detectives obtained an affidavit from Minola McKnight, the negro cook at the Frank-Selig home, 68 East Georgia avenue, was fully explained by E. H. Pickett, an employee of the Beck & Gregg Hardware Co., who questioned the woman at police headquarters for three hours prior to her making her sworn statement.

Mr. Pickett testified that the negress at first denied everything, but that she later related all that was written into the affidavit. Attorney Rosser objected to Solicitor Dorsey questioning the witness concerning the contents of the affidavit, declaring the document itself was the best evidence.

Thereupon Solicitor Dorsey took Mr. Rosser at his word and offered the affidavit in evidence. Mr. Rosser objected and after some argument Judge Roan ruled that he would admit those portions of the affidavit which were material and relevant.

Rather than submit the affidavit piecemeal, Solicitor Dorsey said he would bring out the contents of the document by questions to the witness. He developed that Minola McKnight had finally sworn that Frank did not eat dinner at home on the day of the murder; that he only

remained there a very few minutes; that her husband, Albert McKnight, was present while Frank was at home; that Frank's parents-in-law had requested her to be careful what she had to say; that they raised her wages, and that Mrs. Frank had given her a hat.

To offset the attacks made by Dr. Willis Westmoreland and other Atlanta physicians on the ethics of Dr. H. F. Harris, secretary of the state board of health, whose conclusions, based upon the post-mortem which he had performed upon Mary Phagan's body, had been described by the physicians introduced by the defense as "wild guesses." Solicitor Dorsey called Dr. Samuel C. Benedict, dean of the school of pharmacy of the University of Georgia and president of the state board of health, to testify on behalf of the state.

Dr. Benedict testified that he had succeeded Dr. Westmoreland as president of the state board and that the latter had resigned because the board, by a unanimous vote had sustained Dr. Harris against the charges of scientific dishonesty brought against him by Dr. Westmoreland.

The minutes of the state board were offered as evidence by the solicitor, and vigorous objection was made to their introduction by Attorney Arnold for the defense. When Judge Roan admitted the minutes Mr. Arnold announced that he would offer a letter written by Dr. Benedict to Dr. Westmoreland. He sent out for the letter.

Roy Craven, an employee of the Beck & Gregg Hardware Co., under whom Albert McKnight, husband of Minola McKnight, the negro cook at the Frank-Selig home,

works, testified that he and a Mr. Pickett had gone to see the negro woman at the request of her husband; that he later went to the solicitor's office to see her, and that the solicitor referred him to Detectives Starnes and Campbell, stating the woman had been hysterical while at his office and would not talk.

Craven said he was present when Minola McKnight gave her affidavit to the detectives, and that others present were Detectives Starnes and Campbell, Stenographer George Febuary and George Gordon, admitted that he did not request the detectives to release the woman.

Solicitor Dorsey stated as court convened Tuesday afternoon that some of the state's witnesses were out of town temporarily and that, therefore, he would alter his original plan of procedure and would put Dr. Samuel C. Benedict, of Athens, president of the state board of health, first on the stand.

Dr. Benedict was sworn. He is dean of the school of pharmacy in the University of Georgia at Athens. He testified that he has been connected with the university for thirty-two years; that he was chosen as head of the state board after the resignation of Dr. W. F. Westmoreland, of Atlanta.

"Were you present, Dr. Benedict, when charges were preferred against Dr. Harris?" asked the solicitor.

Attorney Arnold objected. He argued that it would inject another feature into the case which would only serve to obscure the real issue. He argued that it was not in

rebuttal, in as much as the defense merely had asked Dr. Westmoreland his feelings toward Dr. Harris.

Solicitor Dorsey wanted to show, he said, that the state board did not find Dr. Harris guilty of “scientific dishonest,” as asserted by Dr. Westmoreland.

NOT SUBJECT FOR REBUTTAL.

Attorney Arnold said that this controversy was a thing for cross examination and possibly re-direct examination, but not for rebuttal. “If this witness is allowed to testify to these facts, I am going to ask him about a letter he wrote to Dr. Westmoreland,” said Mr. Arnold.

Go ahead and ask him about it,” said the solicitor. “We are not going to let such a statement as Dr. Westmoreland made, go unchallenged.”

The solicitor directed the witness attention to the minute book of the state board of health and directed him to turn to the page containing the minutes of the meeting of September 25, 1913, when Dr. Harris was absolved of the charge against him.

Judge Roan said that he doubted the legality of going into the past relations of the two men, inasmuch as their relations might have changed since that time. There followed some argument.

Dr. Benedict: “I have no desire to reopen the matter.”

“No,” said Attorney Arnold. “We know you haven’t doctor. It’s our friend Dorsey.”

Solicitor Dorsey: “Yes, sir. I open it up. I take all the responsibility for it.”

The solicitor asked the witness. “I want to know if Dr. Westmoreland’s charges were sustained by the board.”

Attorney Arnold objected and said that the minutes of the meeting were the best evidence.

Solicitor Dorsey then instructed the witness to look through the minutes of the meeting and see if he could find a copy of the charges against Dr. Harris. The witness was unable to find that. Judge Roan then sustained the objection of the defense.

“How was the vote of the board, doctor, retaining Dr. Harris?”

“It was unanimous,” said the witness.

“Where are the charges?” asked Attorney Arnold.

“They probably are on record in the office of the board of health.”

CHARGES NOT ON MINUTES.

“Dr. Harris never entered the charges on the minute of the board, did he?”

“No.”

“He entered his own defense, though, didn’t he?”

“The charges were not the action of the board. On page 176 is the reply of the board. Neither Dr. Westmoreland’s charges nor the reply of Dr. Harris are shown on the minutes.”

Attorneys Arnold and Rosser then examined the book containing the state board minutes. Solicitor Dorsey resumed with this question.

“You are acquainted with Dr. Harris’ general reputation as a physician are you not?”

Before Dr. Benedict could answer, there was objection from the defense, and the question was withdrawn.

“What condition have the affairs of the board been in since Dr. Westmoreland resigned?”

The defense objected, and was sustained by Judge Roan.

Dr. Benedict at this junction came down from the stand a few moments to await the arrival of a letter which Mr. Arnold said he would tender as evidence as soon as he could get it to the court.

Attorney Arnold looked at certain portions of the state board minutes which had been marked by Solicitor Dorsey, and objected to the minutes being tendered piecemeal. He objected further to the minutes being tendered at all.

Solicitor Dorsey replied by saying, “Your honor, we asked Dr. Westmoreland what feeling he had against Dr. Harris and he said he had none. We are entitled to show in any proper way if we can that he has feeling against Dr. Harris. Now, that’s one proposition.”

“As to the probity value of these minutes, that’s a question for the jury to decide.”

Attorney Arnold said that the minutes could show only that Dr. Westmoreland preferred charges against Dr. Harris and then had resigned when the board declined to dismiss Dr. Harris. He said that Dr. Westmoreland already had stated this much himself, and that the minutes of the

board were not admissible because they would bring another issue into the case.

Judge Roan admitted the minutes, and Solicitor Dorsey then started to read from that portion of the minutes bearing directly on the controversy between Dr. Westmoreland and Dr. Harris.

The portion that he read showed that Dr. Harris was retained by the board and that Dr. Westmoreland thereupon tendered his resignation, which was accepted.

ROY CRAVEN CALLED.

Roy Crave, of Kirkwood, an employee of the Beck & Gregg Hardware Co., was called to the stand. He stated that Albert McKnight, the husband of Minola, worked under him and that at Albert's request he went to police station one day to try to get her out. The solicitor asked him if he ever had seen Minola before then, and the witness answered yes, that he went out to her house with a Mr. Pickett one day. The solicitor tried to get into the record the statement that the two men had not talked to him or the detectives before they made solicitor reverted to the scene at police headquarters.

"What did Minola say there?" asked the solicitor.

The witness repeated the substance of the affidavit signed by Minola McKnight and introduced in evidence. The witness said at first the negress hesitated about making any statement, but finally told everything which was in the affidavit was read. Present when the affidavit was made were Detective Starnes, G. C. Febuary, Albert McKnight colored and Attorney George Gordon.

Attorney Rosser took up the cross-examination.

“Didn’t you know she was locked up there because she wouldn’t tell the story they wanted her to tell?” he asked.

“No.”

“Were you in Dorsey’s office?”

WENT TO SEE DORSEY.

“Yes, I went there to set about getting Minola out of jail.”

“What did he say to you?”

“He told me to go and see Starnes and Campbell.”

“Didn’t you know that she had already made a statement?”

“No.”

“Didn’t Mr. Dorsey tell you?”

“No, he said she was hysterical and would not talk.”

“Did you insist on her making a statement at police station?”

“Yes.”

“Did you insist on her making a statement at police station?”

“Yes.”

“Why, then, did you keep on?”

“Because I wanted to see whether she or her husband was telling the truth.”

“Weren’t you there three hours?”

“No, just a little over two.”

“You say you went there to get Minola out of jail?”

“Yes.”

“Did you ask Starnes and Campbell to turn her out?”

“No.”

“Well, whom did you ask to turn her out?”

“Nobody.”

“Did you leave right after she made that statement?”

“Yes.”

“Come down.”

The solicitor detained the witness.

NO ONE ABUSED NEGRESS.

“Did anybody curse or abuse the negress?” he asked.

“No.” The witness left the stand.

Solicitor Dorsey tendered in evidence the affidavit by Minola McKnight. Attorney Rosser objected. The solicitor argued, declaring that it was the very best evidence of what she said and a direct and flat contradiction of what she swore in court. The solicitor did not press his contention, however, but dropped the matter temporarily and called E. H. Pickett to the stand.

Picket is an employee of the Book & Gregg Hardware company. As soon as he took the stand, Solicitor Dorsey handed to him the affidavit, and the witness read it. Pickett then testified that he was present when Minola made the affidavit at police headquarters.

“What did she can do when Attorney Gordon was there?” asked the solicitor.

“She made this statement.”

“Tell the jury, just exactly as well as you can, what she said before she signed that paper.”

DENIED ALL AT FIRST.

“Well, at first she denied everything. She was a little hysterical and did not want to talk to the detectives. They retired and she talked to us, though the them acknowledged a few things. She said that she had received more money than was her ordinary wage, and that she had been cautioned to say nothing about what she had heard. She never admitted that it was the whole truth until she went to make her statement.”

“What did she after the detectives left?”

“First, she said the whole thing was a lie.” The witness testified that first an attempt was made to take her statement in long hand, but that Stenographer Febuary later was called in and took it in shorthand. The witness said that she did not make all of the disclosures until she was ready to make the last statement.

“Does this affidavit contain anything that she did not state?”

“Not a thing.”

Solicitor Dorsey started to ask the witness certain questions about what she said. The defense objected on the ground that the affidavit itself was the best evidence of that. Solicitor Dorsey argued that was his contention, and

that he wanted to introduce it in evidence. There followed considerable argument, during which Judge Roan said he was inclined not to rule against the admission of the entire affidavit and said he thought it was legal to let the document go into the records after striking out that portion of it which might be irrelevant or immaterial. There followed some more argument.

AFFIDAVIT BASIS OF QUERIES.

Judge Roan finally ruled that he would admit the affidavit except such portions of it as might be irrelevant. Solicitor Dorsey said that rather than make any change in the affidavit just at that time to conform to the ruling of the court, he would use the affidavit in questioning the witness, and he proceeded as follows:

“What did she first say as to Mr. Frank eating dinner?”

“She first said that he ate dinner when he came home Saturday.”

“What did she finally say?”

“She finally said he did not eat dinner.”

“What did she first say as to the time he remained at home?”

“What did she first say as to the time he remained at home?”

“She first said that he was there quite a while.”

“What did she finally say?”

“She finally said that he was there only a few minutes.”

“What did she first say as to her husband being at the Selig residence while the family was eating dinner?”

“She first said he was not there.”

“What did she finally say?”

“She finally said he was there.”

FRANK’S CONVERSATION SUNDAY.

“What did she first say as to the conversation that took place between the Seligs and Mr. Frank during dinner on Sunday?”

“She first said that she heard none.”

“What did she finally say?”

“She finally mentioned hearing it, but I don’t recall the words that she used.”

“What did she first say as to the Seligs requesting her not to talk?”

To this question Attorney Rosser objected on the ground that Frank could not be held responsible for what the Seligs did or did not say to Minola McKnight.

Solicitor Dorsey in reply contended that the affidavit was being introduced to contradict what Minola McKnight swore on the stand.

Judge Roan asked the solicitor to repeat the question, which he did, and the witness answered that the negress first denied that the Seligs had said anything of the kind to her.

Attorney Rosser objected again on the ground that state could not contradict testimony which had been immaterial in the first instance.

Attorney Hooper argued emphatically that the state could contradict any witness put on the stand by the defense.

After a long wordy argument, Judge Roan ruled in favor of the state, and Attorney Arnold recorded an objection.

Solicitor Dorsey continued.

“What did she finally say as to the Seligs having cautioned her not to talk?”

“She finally said that when she left the house, they told her to be careful what she said—or words to that effect.”

“What did she first say as to the wage she being paid?”

“She first said there had been no change in her wages.”

“What did she finally say?”

WAGES WERE RAISED.

“She finally said that her wages had been raised, but I cannot repeat the amounts she mentioned.”

“What did she first say as to the hat Mrs. Frank had given her?”

“The only thing she said about the hat was what she said in the affidavit.”

“Did anyone mention the hat to her until she mentioned it herself?”

“No, sir.”

“Did anyone threaten her?”

“I want to be understood. We asked her some questions.”

“Were Campbell and Starnes in there when you questioned her?”

“They were not.”

“When did they come into the room?”

“When we called them in.”

“Who was there before they came in?”

“Her husband, Mr. Craven, and myself.”

The cross-examination was then taken up by Attorney Rosser.

“Why didn’t you take the denial of the woman, to her husband’s story?” demanded Mr. Rosser.

“Because we didn’t believe it.”

“Well, don’t you think what you put her through was a pretty good imitation of the third degree?”

The solicitor objected and the question was not answered.

A THREE-HOUR GRILLING.

The witness said that he was questioning the woman for three hours. He said that before going to headquarters he saw the solicitor, and that Mr. Dorsey told them they could go and see her and tell her that he, Dorsey, had agreed for them to stand her bond.

“What made you grill her?”

“We wanted to find out the truth,” coincided with her husband’s, you told her she could depart in peace, didn’t you?”

“No, we called in the detectives and let them take the affidavit.”

Mr. Rosser, in questioning the witnesses about the way he left the detectives into the room, got off what he (Rosser) terms some of his “monkey motions.” When the witness declared that he did not let them into the room in the manner described by the attorney. Mr. Rosser said: “Well, I mean you let ‘em in just about like I said except you didn’t use any of those monkey motions. Nobody but me can get them off.”

The witness agreed with Mr. Rosser.

In answer to a question, the witness admitted that before he went to headquarters, he had information that Minola was locked up because she would not make a statement to agree with the statement made by Albert McKnight. The witness was excused.

ALBERT MCKNIGHT ON STAND.

Albert McKnight, colored, husband of Minola, was called to the stand. He was examined by Attorney Hooper, and stated that he sat at the left of the kitchen door at the time he claims to have overheard conversation in the dining room of the Selig home. The negro stated that the sideboard on the plant exhibited to him and introduced in evidence previously by the defense was in a different position from the one it occupied that day. On cross-

examination, however, the negro admitted that it was the angle of the sideboard on the plant which had been changed and not the position.

Judge Roan ruled out a number of questions which Mr. Hooper sought to put to the negro on the ground that it would be repetition of the negro's first testimony.

The court took a five-minute recess.

Miss Nellie Wood, a former employee of the pencil factory, was called as the next witness. A long legal battle followed over her testimony. The argument was not heard by the jury, which had been ordered to retire.

The witness came to the stand while the jury was out, by agreement of the attorneys, and the jury was not brought back until they had thrashed out the question of whether or not she would be able to testify to alleged misconduct on the part of Frank.

Solicitor Dorsey outlined to the court what he expected to prove by the witness, first suggesting that Mrs. Rae Frank, mother of the accused, leave the court. Mrs. Leo M. Frank was not in court at the moment.

STATE ATTACKS FRANK'S CHARACTER.

Addressing the court, he said: "The state wants to prove and is in a position to prove general bad character on the part of Frank, and we want also to prove specific instances of misconduct. We want to show by this witness that he made an indecent proposal to her in his office. I contend we have the right to bring it out on direct examination. The defense proved Frank's good character

on direct examination. It is admissible in rebuttal of numerous witnesses."

Attorney Rosser said: "We asked one question of many witnesses to refute the statement of Conley, whose evidence was entered over our objections. What the solicitor wants to introduce is not in rebuttal to anything."

Solicitor Dorsey replied "It's got nothing whatever to do with Conley's story. It refutes the testimony of the girls who testified here that they worked on the fourth floor and that they never had been in Frank's office for immoral purposes." He turned to Miss Wood. "Which floor did you work on when you were there, Miss Wood?"

"I don't remember very well. I only worked there only two days. It was the fourth floor, though, I think."

SOLICITOR CITES RECORD.

The solicitor read a question put to Mrs. Small by the defense, which had introduced her as one of its witnesses; asking her if she ever had met Frank in his office for any immoral purposes. It was the same question which had been put to all of the girls who worked on the fourth floor.

"Now, your honor," said the solicitor. "If the defense has the right to show by its witnesses that they never were in Frank's office for any immoral purpose, haven't we the right to prove of this witness that she was in his office and that he made an indecent proposal to her? The state is helpless to come back if they are allowed to develop an issue that we cannot contradict."

Judge Roan: "As I understand it, their evidence (of the defense) came in rebuttal of testimony which was admitted

over their objections, and testimony which I think had they objected to it at the time it went in I would have been compelled under the law to rule out.

“In my mind, the testimony of this witness is not admissible.”

Solicitor Dorsey exclaimed “Then I’m shut out—.”

It’s the law, Mr. Dorsey,” interrupted Judge Roan.

“Now, before we bring the jury in, I want you to decide all of this,” said the solicitor. “These gentlemen want it all put before the court. I have other witnesses who will follow this young woman. By them I want to prove misconduct. Haven’t I the right to show by a certain girl who once worked for the National Pencil company, the position in which she saw Frank once, for example? Haven’t we a right to show what this man did going through the factory. In the way of slapping and pinching girls.”

MUST ASK USUAL QUESTIONS.

“Mr. Dorsey, whenever you put women up to show bad character,” said Judge Roan, “then the defense can go into it on cross examination. You will have to ask the usual questions. The law is written that way, and it binds us all.”

The jury was brought in.

“Are you acquainted with the general character of Leo M. Frank?” asked the solicitor of Miss Wood.

“No, sir.”

The solicitor looked somewhat surprised.

“General character is made up of what people say about a man—that is, his reputation in the community

where he lives. Now from that explanation do you think you can testify as to whether or not you knew his general character?”

“Not positively,” answered the witness.

The solicitor then propounded his question, to which the witness replied that she had known Frank only two days.

DORSEY SAYS HE WAS MISLED.

Thereupon Solicitor Dorsey informed the court that he had been misled by the witness. Attorney Rosser objected to his making that statement. The solicitor undertook to ask the witness more questions, and Attorney Rosser objected again. The judge ruled that inasmuch as the witness had testified to nothing at all, she had failed to qualify, whereas if she had testified to something contrary to what she had failed to qualify, whereas if she had testified to something contrary to what she had informed the solicitor in a previous conversation, then the solicitor, under the law, would have the right to cross-examine her in an effort to impeach her testimony.

Accordingly, Miss Wood was excused from the witness stand.

J. H. Hendricks was called by the state. He has been a street car motorman since November 20, 1911. He testified that he is now running on the White City and Marietta to Inman Yards line, and that on April 26 he was running on the Marietta-Stockyard line. He testified that the car on which Mary Phagan came to town is due to reach the corner of Broad and Marietta streets at 12:08 o’clock. The

solicitor’s questions to the witness elicited repeated objections, with the final result that the witness testified in substance as follows:

REBUTS STREET CAR MEN.

That the Cooper street-English avenue line for a part of the distance travels over the same track that the Marietta-Stockyard line uses; that it is not unusual for the Cooper street-English avenue line to arrive in town ahead of time; that the Marietta-Stockyards car is due to arrive at Broad and Marietta street at 12:06; that on several occasions he recalls having reached that corner at that hour, and having found Matthews and Hollis, the conductor and motorman of the Cooper street-English avenue line, already in town, relieved by another crew and waiting to catch his car to go to dinner.

This testimony was in a rebuttal of the testimony of Matthews and Hollis, who brought Mary Phagan to town on April 26, to the effect that they never get to town ahead of time.

J. C. McEwen, a street car motorman, was the next witness. He testified that prior to April 26 the White City trolley car due at Broad and Marietta at 12:05 often was cut off by the English avenue car due there at 12:07. He made the statement over objection by attorneys for the defense. Judge Roan allowing the testimony. He testified that cars frequently are ahead of time in reaching a terminus point, especially on the rest of trip.

On cross-examination, he admitted that premature arrival at terminals is against the rules, and that he and other street car men tried not to come in ahead of time. He

also admitted that on the occasions he had known the White City car to be cut off by the English avenue car, the former might have been behind time.

SAW MARY PHAGAN ON FORSYTH.

M. E. McCoy was the next witness. He described himself as a painter and farmer living near Bolton, Ga. When he is painting, he said he works for the Leo Marcus Construction company. He declared that he knew Mary Phagan; that he saw her on April 26, 1913, about 12 o'clock, in front of the Cooledge store at 12 Forsyth street, and that she was walking toward Alabama street. Asked to be more definite about the time, witness said, and that she was walking toward Alabama street. Asked to be more definite about the time, witness said, "I left the corner of Walton and Forsyth streets at noon and it took me about three or four minutes to get where I saw her."

Mr. Rosser cross-examined the witness.

"How did you know what time you left the corner?"

"I looked at my watch," said the witness.

"Why"?"

"I just wanted to know the time."

"This little girl left her home at 11:45 o'clock. How could she have gotten to the point where you say you saw her at this time?"

"I don't know anything about what she did. I know I saw her."

"Whom did you first tell about this?"

“I told Mr. Robinson and Mr. Heard county policemen, a week ago last Saturday.”

“That was the first time you told about it?”

“It was the first time I’d told an officer.”

“Wasn’t it the first time you’d told anybody?”

“I don’t rem”

“Why didn’t you tell about it at first?”

“Because I didn’t think it amounted to anything.”

“Why did you tell the officers then?”

“I read the motorman’s statement that she got off at Broad and Hunger, and I knew that was wrong.”

“Where are you working now?”

“With the Leo Marcus Construction company.”

“Did you look at your watch at noon the day before the 26th?”

“Yes.”

“And the day before that?”

“Yes.”

“Well, what time is it now?”

The witness reached for his watch and Mr. Rosser stopped him. The witness declared he couldn’t tell without looking at his watch.

“What time was it when you last looked at your watch?”

“I don’t remember.”

DESCRIBES GIRL'S DRESS.

"How was Mary Phagan dressed?"

"In blue."

"Describe her."

"She was a low chunky girl."

"Did she have very light hair?"

"No."

"I see," said Mr. Rosser: "It was pretty dark was it?"

"No, it was between."

"What color eyes?"

"I don't know."

"What sort of hat?"

"Blue."

"How was it trimmed?"

"I don't know."

"Didn't you see by the paper that she had a blue hat?"

"I don't remember. I don't think I did."

"What were you doing on the corner that day?"

"I wasn't working that day and had come in from Buckhead on the 11:50 car and stopped at the corner."

"What were you doing there?"

"Talking to some men."

"Who were they?"

"I don't remember."

“Who was on the car coming in?”

“I don’t remember anybody that I know.”

ANOTHER WITNESS SAW GIRL.

George Kendley, a street car motorman, was the next witness. He testified that he had been employed by the company for twelve years. He said that he saw Mary Phagan on April 26 at about noon as she stepped from the Forsyth street viaduct, going toward the pencil factory.

Attorney Rosser cross-examined the witness, going after him hard. The attorney made a greater effort to discount Kendley’s story than he had exerted toward any other witness during the day.

Under direct examination, the witness testified that he was on the Hapeville line, and had been relieved at the corner of Forsyth and Alabama, the terminal of the line, a few moments after his car arrived there at 11:40 o’clock. He testified that he rode down to Mitchell street, and then returned to Alabama and Forsyth. He reached there about 12 o’clock, he said, on the front platform of a passing car; and it was from there that he saw Mary Phagan.

On cross-examination, Attorney Rosser asked: “Whom did you tell of this occurrence?”

“Well, I told a lot of folks.”

Pressed for the name of some individual, he gave the name of James Means.

“Who were the motorman and conductor on this car that you rode on when you Saw Mary Phagan?”

“The conductor was named John Winters and the motorman was named Frank.”

In answer to questions by Attorney Rosser, the witness admitted that if the girl caught the car it is alleged she boarded at Lindsay street at 11:50 o’clock, she could hardly have been in town before 10 minutes after 12 o’clock. It couldn’t have been earlier than 12:05, he said. He admitted that the time he gave was only an estimate, and might be wrong.

KNEW MARY PHAGAN WELL.

Solicitor Dorsey interposed a question: “You are not mistaken about seeing Mary Phagan, are you?”

“No, no. I knew her well.”

Attorney Rosser: “Whom else did you see on the street?”

Before the witness apparently had time to answer, the attorney put another question. “Why did you hide this all this time? Why didn’t you go to the coroner’s jury with it?”

Solicitor Dorsey objected. Attorney Rosser, without waiting for an answer, said, “Isn’t it a fact that you’ve made yourself a nuisance on your car, by vilifying this man Frank?”

“No, sir.”

“Do you know Mr. Brent?”

“Yes.”

“Didn’t you tell him that Frank killed Mary Phagan? Didn’t you tell him that you knew Frank was guilty, because Frank’s children told your children that he was?”

Solicitor Dorsey objected on the ground that questions were illegal. Judge Roan sustained him.

“Didn’t you abuse Frank in the presence of Mr. Johnson, of the Keely company?” continued Mr. Rosser, unheeding.

“I don’t know Johnson.”

“In the presence of Miss Haas, didn’t you vilify and abuse Frank?”

ROSSER HOT AFTER WITNESS.

Attorney Rosser continued to ask numerous questions, rapidly, about alleged remarks of the witness in the presence of certain people. The attorney did not pause for answers. Attorney Hooper objected.

“I submit, your honor,” said Mr. Hooper, “that no human being could answer questions poured at him in this manner.”

“He’s answering pretty well,” said Mr. Rosser.

Attorney Hooper: “I object to that remark your honor.”

“Haven’t you been just blowing, and making yourself a nuisance on the car?” continued Mr. Rosser, attacking the witness again. He fired other questions at the motorman.

Solicitor Dorsey interrupted.

“This is improper conduct on the part of counsel for the defense,” charged the solicitor. “The witness ought to be protected. He ought to be given time to answer questions put to him.”

“Haven’t you made such a nuisance of yourself,” demanded Mr. Rosser of the witness. “In talking of this case, that there have been complaints from passengers?”

“No, sir,” said the witness.

Solicitor Dorsey insisted that the witness should be given the name of the parties referred to by Mr. Rosser, and after some wrangling Mr. Rosser resumed.

“All right,” said he. “Didn’t you say in the presence of Miss Haas that you would be one of a party to lynch Mr. Frank?”

“There was some talk on the car.”

“I’m not asking you about talk on the car. I’m asking you if you didn’t say that?”

“No, sir.”

“Nothing like that?”

“No, sir.”

“When did you tell the detectives about seeing Mary Phagan over on Forsyth street?”

“One day last week, I believe.”

“Who was it you said you told on the following day”

“Mr. Means.”

“When did you say you told him?”

“I think it was the next day.”

“Didn’t you say positively a while ago that it was next day?”

“Maybe I did.”

“You didn’t look at your watch when you saw Mary, did you?”

“No, sir.”

HE ESTIMATES TIME.

“Then you are just estimating the time, are you?”

“Yes, sir, I reckon I am.”

“Suppose she got on a car out there at Lindsay street at 10 minutes to 12. What time would she get to town?”

Solicitor Dorsey objected, and was sustained. Anthony Rosser changed his question.

“Starting from Lindsay street 10 minute to 12, what would be the earliest possible time that a person travelling on a street car could arrive in the city?”

“I should say about 5 minutes after 12.”

“Then will you swear that you saw has 5 minutes after 12?”

“Then will you swear that you saw has before 5 minutes after 12?”

“I think I’m positive that I saw him before that time, yes, sir.”

‘Do you know that the Hapeville car was on time, that brought you back up to the corner of Alabama and Forsyth streets?’

“No, sir, I’m not certain. All I know is that the schedules were not deranged that day.”

“Then you are estimating as to what time the car got there?”

“Yes, sir, I reckon I am.”

“All right, come down,” said Attorney Rosser in a sneering tone; and as the witness stepped down from the chair, Mr. Rosser said, ‘Wait a minute. What’s your number?”

“What do you mean?” stammered the witness. “The number of my car?”

“No, I mean the number that you wear on your cap,” shouted Mr. Rosser. “You know what I mean.”

The witness replied that his number is 1445.

DR. JOHNSON CALLED.

Dr. Clarence Johnson was called as the next witness. He stated that he is a specialist in disease in diseases of the stomach and intestines. In reply to questions, he explained that this specialist in diseases of the stomach and intestines. In reply to questions, he explained this specialty is different from surgery in that it is a specialized department of surgery. Asked to define a pathologist is one who makes a specialty of research in diseased conditions if the body. Asked what a pathologist uses, he said that a pathologist uses a body that is dead or fluids from a body that are supposed to be dead.

“What is a physiologist?” asked the solicitor.

Attorney Rosser objected. He declared that the solicitor might as well go into a discussion of arithmetic or

grammar. Solicitor Dorsey replied: “Your honor, they have put up surgeons, general practitioners, etc., and now we want to show that a stomach specialist and a pathologist are calculated to know more about the question at issue in this case than a general practitioner or a surgeon.”

Attorney Rosser persisted in his objections. “That’ll never do, your honor,” said he. “Some pathologists are fools, I suspect; and some other specialists, too, though I don’t mean this to refer to anybody in particular. It won’t do for your honor to entertain the proposition that one class of physicians knows more than another class.”

Solicitor Dorsey replied that this was a question for the jury to decide, and was sustained, and proceeded.

“What is a physiologist?” he repeated.

“A physiologist is one who studies the body in health.”’

“What is the essential difference between a physiologist and a pathologist?”

“A physiologist deals with living normal body, and a pathologist with a dead body as compared to a living normal body.”

ROAN RULES WITH STATE.

In reply to questions, Dr. Johnson stated that he had held the chair of pathology, the chair dealing especially with stomach and intestinal diseases, at the Atlanta College of Physicians and Surgeons. Dr. Harris succeeded him as pathologist who had testified in court, took the physiology chair at the same college a few years ago.

In answer to a question, the witness said that formaldehyde often is used by pathologists as an antiseptic in which to preserve specimens of bodies.

“Would death change the conditions in the stomach if formaldehyde had been put in?”

Mr. Arnold objected, saying that the solicitor should have made out his medical case at first; that the defense simply had rebutted the statements of Dr. Harris and had gone no further, and that for that reason the solicitor had no right to go into it.

Judge Roan said; “I understand the rule to be that the state must make out its main case, but if the defense in rebutting the state’s case brings out anything more than the state’s witness testified to, then the state has a right to rebut.”

Mr. Arnold declared that nothing new had bene brought out.

Solicitor Dorsey said “We made out only a prima facie case, and now we have a right to build to that.”

The solicitor put the following question to the witness: “If a person drank a chocolate milk at 8’clock, and at 10-o’clock ate cabbage, which was taken out of the stomach 45 minutes later, and the color was this (holding up one of the specimens introduced by Dr. Hancock for the defense), what would you say as to the condition of that person’s stomach?”

“I would term it abnormal,” said Dr. Johnson.

Another of the specimens submitted by Dr. Hancock, where a tomato showed with the cabbage, was exhibit, D, whose stomach that came had a stomach not normal.

LONG HYPOTHETICAL QUESTION.

The solicitor then put a long hypothetical question to the witness, relative to digestion as it relates to the case on trial, and asked if Dr. Johnson would characterize as a “wild guess” the opinion of a physician who, with the cited facts before him, fives an interval between the time the cabbage was eaten and the time the person that ate it died.

Mr. Arnold objected, and before the court ruled Mr. Dorsey asked Judge Roan to allow him to cite authorities in the morning before he made his ruling.

Judge Roan consented to this, and adjourned court, the hour being 5:50 o’clock. Court will reconvene at 9 o’clock Wednesday morning.

Mr. Arnold stated in court during the discussion of this point, that if the question put up by Solicitor Dorsey was allowed by the court the defense would have to bring back to the stand all of the several physicians and surgeons whose testimony it used in attacking the conclusion by Dr. H. F. Harris as to the time of Mary Phagan’s death after her last meal.